THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.6722 OF 2006

DATED: 06-04-2006

BETWEEN

Manchala Ramasuri, S/o. Appala Naidu,
Proprietor of Ambica Ice Factory, D.No.9-24,
Demili Road, Yellamanchili, Visakhapatnam.

...PETITIONER

AND

The District Panchayat Officer,
Visakhapatnam, Visakhapatnam
District and others.

...RESPONDENTS

ORDER:

Petitioner seeks a Writ of Mandamus to declare the action of the first respondent in not passing order in second appeal of 2005 dated 29.10.2005 filed by the petitioner against the refusal of the first appeal of 2005 dated 03.10.2005 by the Gram Panchayat, Yellamanchili sent by registered post with acknowledgement due on 03.10.2005 as illegal and arbitrary.

Learned counsel for the petitioner submits that the petitioner obtained a licence to run ice factory in the name and style of
M/s. Ambica Ice Factory, in shop bearing No.9-24, Damili Road, Yellamanchili and he has been running the said ice factory from February 2004 by paying the licence fee of Rs.80/- per year. While so, the Panchayat Secretary of Yellamanchili Gram Panchayat issued a show cause notice 30.05.2005 to the petitioner to show cause as to why his licence shall not be cancelled as it is causing nuisance and as complaints have been received from people regarding obstruction of their passage and sleep. Thereafter, the petitioner submitted his explanation, which was considered, and the

second respondent vide his proceedings Rc.No.4/2005 dated 20.06.2005 cancelled the licence of the petitioner directing him to close down the ice factory.

Against the said order the petitioner filed an appeal before the Gram Panchayat under Section 128(1) of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act') on 03.10.2005 but the Gram Panchayat refused to receive the same vide endorsement dated 17.10.2005.

As against the said refusal the petitioner filed second appeal before the District Panchayat Officer on 29.10.2005 under Section 128(2) of the Act. This writ petition has been filed to direct the first respondent to consider and dispose the said appeal.

I am of the opinion that unless a decision has been taken on the first appeal by the Gram Panchayat by passing an order no appeal lies under Section 128(2) of the Act. Therefore, it is just and proper to direct the Gram Panchayat, Yellamanchili, to receive the appeal to be filed again by the petitioner and pass appropriate orders on the appeal.

Accordingly, the petitioner is permitted to file an appeal before the Gram Panchayat within one week from the date of receipt of a copy of this order and thereafter, the Yellamanchili Gram Panchayat, shall consider and dispose the appeal within three weeks from the date of receipt of the appeal.

The writ petition is accordingly disposed of.

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V. ESWARAIAH, J

April 6, 2006
DSK